

Appln. No. 10/789,615  
Amendment dated August 15, 2005  
Reply to Office Action mailed May 13, 2005

**REMARKS**

Reconsideration is respectfully requested.

Claims 1 through 3 and 5 through 8 remain in this application. Claims 4 and 9 have been cancelled. No claims have been withdrawn. Claims 10 and 11 have been added.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

**Paragraph 2 of the Office Action**

The drawings have been objected to.

The specification has been amended to remove the reference to "10".

Withdrawal of the objection to the drawings is respectfully requested.

**Paragraph 3 of the Office Action**

Claim 2 has have been objected to for the informalities noted in the Office Action.

Claim 2 has been amended in a manner believed to clarify any informalities in the language.

Withdrawal of the objection to claim 2 is therefore respectfully requested.

**Paragraphs 4 through 7 of the Office Action**

Claims 1 through 4 and 6 through 8 have been rejected under 35 U.S.C. §102(b) as being anticipated by Kohler.

Claims 5 and 9 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Kohler in view of Zubalik.

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Claim 1, particularly as amended, requires "wherein said frame member comprises a pair of substantially U-shaped engaging portions each having a throat for receiving an upper periphery of the ear of the user, the engaging portions each having ends that extend over the ear when said frame member is engaged with the ear, said frame member further comprising a pair of alignment portions extending between corresponding said ends of the engaging portions to join said pair of engaging portions together such that said pair of engaging members and said pair of alignment members form a continuous loop". The continuous loop of claim 1 is submitted to eliminate the possibility of the user being poked by an open or unprotected end, especially when the frame member is conformed to the ear of the user.

It is submitted that the cited art, and particularly the Kohler patent, would not lead one of ordinary skill in the art to the requirements of claim 1 as amended.

Further, claim 6 requires "said sleeve member comprising a perimeter wall, said perimeter wall defining a receiving bore extending through said sleeve member, said perimeter wall including a pair of opposed wall portions, each of said opposed wall portions having a protrusion, each of said protrusions extending in opposition to said protrusion on the opposite one of said opposed wall portions". The opposed protrusions are submitted to be significant as they help to hold the sleeve member on the frame member in an easily removable fashion.

It is submitted that neither of the cited patents leads one of ordinary skill in the art to the opposed protrusion of the claimed sleeve member.

Added claim 10 requires that "said throat formed by said engaging portions has a substantially uniform width and extends along a single axis". This feature of the invention facilitates the easy and relatively painless insertion of the portion of the ear that includes cartilage (which doesn't

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bend easily or comfortably) and thus benefits from a relatively straight throat.

It is submitted that the cited patents, and particularly the Kohler patent, would not lead one of ordinary skill in the art to the requirements of claim 10, as the Kohler device is clearly directed to a device that distorts a soft and cartilage-free portion of the ear in order to remain attached.

Further, it is submitted that one of ordinary skill in the art, considering the Kohler patent that employs a pinching and contortion of the ear lobe to retain the device on the ear, would modify the Kohler device to include a magnetic structure set forth in the Zubalik patent.

Withdrawal of the §102(b) and §103(a) rejections of claims 1 through 3 and 5 through 8 is therefore respectfully requested.

### CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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Date:

August 15, 2005